IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WP(C).No. 19304 OF 2007(W)

PETITIONER:

KIZHAKKAMBALAM GRATINES, VILANGU P.O.,
KIZHAKKAMBALAM REPRESENTED BY ITS
MANAGING PARTNER M.V.THOMAS.

BY ADV. SRI.V.GIRI

RESPONDENTS:
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1. THE SUPERINTENDENT OF POLICE (RURAL),
ALUVA.

2. THE SUB INSPECTOR OF POLICE, KUNNATHUNAD
POLICE STATION, KUNNATHUNAD.

3. KIZHAKKAMBALAM GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, KIZHAKKAMBALAM.

4. OOROTH REJI, S/O.JOSEPH, VILANGU P.O.,
KIZHAKKAMBALAM.

5. GIGI MATHEW, KOLOTHUMKUDY HOUSE,
CHOORAKADU KARA, PATTIMATTOM P.O.

6. JAYAN K.MATHEW, IKARAKUNNATH HOUSE,
(KANJIRAKATT), CHOORAKAD KARA, VILANGU P.O.,
KIZHAKKAMBALAM.

7. A.P.KURIACHAN, IKARAKUNNATH HOUSE,
(KANJIRAKATT), CHOORAKAD KARA, VILANGU P.O.,
KIZHAKKAMBALAM.

8. JOSEPH, OOROTH HOUSE, VILANGU KARA,
VILANGU P.O, KIZHAKKAMBALAM.

R3 BY ADV. SRI.S.SREEKUMAR
R4 & R8 BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.P.P.BIJU
R5 TO R7 BY ADV. SRI.SAIBY JOSE KIDANGOOR

GOVT. PLEADER SRI. P.A. SALIM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON 23/07/2007 DELIVERED THE FOLLOWING:

WP(C) 19304/2007

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRUE COPY OF THE ORDER OF THIS COURT DATED 30.5.2005 IN W.P.(C) 155 OF 2005.
EXT.P2	TRUE COPY OF THE LICENSE ISSUED BY THE THIRD RESPONDENT PANCHAYATH DATED 16.6.2006 VALID UP TO 31.3.2007.
EXT.P3	TRUE COPY OF THE CONSENT ORDER ISSUED BY THE POLLUTION CONTROL BOARD DATED 8.2.2006.
EXT.P4	TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE PANCHAYATH DATED 13.2.2007.
EXT.P5	TRUE COPY OF THE COMMUNICATION ISSUED BY THE PANCHAYATH DATED 1.3.2007.
EXT.P6	TRUE COPY OF THE LETTER ADDRESSED BY PETITIONER TO PANCHAYATH DATED 9.3.2007.
EXT.P7	TRUE COPY OF THE JUDGMENT DATED 2.4.2007 IN W.P. (C) 155 OF 2005 OF THIS HON'BLE COURT.
EXT.P8	TRUE COPY OF REPRESENTATION SUBMITTED TO FIRST RESPONDENT ON 21.6.2007.
EXT.P9	TRUE COPY OF REPRESENTATION SUBMITTED TO SECOND RESPONDENT DATED 21.6.2007.

// TRUE COPY //

P.S. TO JUDGE.

KNC/-

P.R. RAMAN & K. HEMA, JJ.

W.P.(C) NO. 19304 OF 2007

DATED THIS, THE 23RD DAY OF JULY, 2007.

J U D G M E N T

Raman, J.

Petitioner, a firm registered under the Indian Partnership Act, is a metal crusher unit by name "Kizhakkambalam Granites". They seek police protection to run the unit. According to the petitioner, they obtained necessary licence and permission from the local authority as well as the Pollution Control Board. Respondents 4 to 8 are causing obstruction to the smooth running of the unit and in spite of the request made to the police, no effective steps are taken. Hence this writ petition is filed.

2. According to the petitioner, earlier, the 8th respondent herein preferred WP(C) 155/2005 before this Court seeking appropriate direction to the Grama Panchayat to take steps to stop any extension of the petitioner Unit (3rd respondent in the said writ petition) by installing any additional Metal Crusher and Diesel Generator. Ext.P1 is the copy of the order passed in the said writ petition, directing the third respondent therein who is the petitioner herein that he shall operate the unit only after getting permission

from the Panchayat and also after getting consent letter from the Pollution Control Board. Subsequently, the writ petition itself was disposed of by Ext.P7 judgment dated 2nd April, 2007, making the interim order absolute.

3. As regards the grievance of the petitioner therein that the unit is running exceeding the capacity, he was given an opportunity to move the Panchayat. Ext.P1 is dated 30th May, 2005. It is the contention of the petitioner that thereafter Ext.P2 license was issued on 16.6.2006 by the Grama Panchayat to operate the Metal Crusher Unit by using 163 HP and the said license was valid up to 31.3.2007. Ext.P3 dated 8.2.2006 is a consent renewal order issued by the Pollution Control Board which is valid up to 31.12.2008. Pursuant to the expiry of Ext.P2, petitioner submitted an application to the Grama Panchayat for renewal of his license on 13.2.2007 which is well within the time as prescribed under Section 236 of the Kerala Panchayat Raj Act. Petitioner also submitted that the Panchayat, by their letter dated 1.3.2007, informed that his application will be considered only after receiving the sub-committee's report. Therefore, according to the petitioner, there is neither refusal nor grant of renewal as sought for since 30 days period expired after he submitted his application. Since Panchayat did not either grant the renewal or refused to grant renewal even after expiry of the 30 days period prescribed in the said provision, by operation of Section 236(3) of the Act, there is a deemed license in favour

of the petitioner.

4. Ext.P8 is the copy of the complaint made to the Superintendent of Police seeking necessary protection to run the petitioner's unit, without being obstructed by anybody. Ext.P9 dated 21.6.2007 is a copy of the complaint given to the Sub Inspector of Police, by the petitioner, alleging that Raji and Saji, sons of Vilangukara Ooroth Veettil Jose and one Kuriachan have trespassed into his property and thereupon he and his workers were obstructed from the working of the unit. Action was also requested to be taken.

5. On behalf of Respondents 5 to 7, a counter affidavit is filed by the 7th respondent. It is there case that the license issued to the petitioner had expired in March, 2007. They place reliance on Ext.P5 and would contend that in the light of the letter issued by the Panchayat, petitioner can not seek any benefit under Section 236(3) of the Kerala Panchayat Raj Act.

6. Learned counsel Sri. S. Sreekumar, appearing on behalf of the 7th respondent, would submit that subsequent to the filing of the writ petition, by order dated 30.6.2007 petitioner's request for renewal of the license has been declined by the Panchayat and hence even assuming for argument's sake that Ext.P5 is not an order declining renewal sought for, at any rate, in view of the subsequent order dated 30.6.2007, petitioner cannot as on date, place any reliance on the provisions contained in Section 236(3)

of the Act and since his request for renewal has been declined by the Panchayat, no police protection could be afforded to him.

7. Learned counsel Sri. Unnikrishnan, appearing for Respondents 4 and 8 also supported the contention of the Panchayat and further submitted that as against the consent letter issued by the Pollution Control Board, he has preferred an appeal before the appellate authority and has pleaded that discretionary power of this Court under Article 226 may not be exercised in the circumstances as brought out by the materials already produced.

8. We have heard the parties. As per Section 236(1) of the Kerala Panchayath Raj Act, an application for renewal shall be made not less than thirty days and not more than ninety days before the earliest date with effect from which or the commencement of the period for which license or permission is required. In other words, the renewal application has to be given at least 30 days prior to its expiry. Hence the application submitted by the petitioner Ext.P4 is within time.

9. As per Section 236(3) of the said Act, if orders on such application are not communicated to the applicant within thirty days or such longer period as may be prescribed in any class of cases after the receipt of the application by the Secretary, the application shall be deemed to have been allowed for the period, if any, for which it would have been ordinarily allowed and subject to the law, rules and bye-laws and all conditions

ordinarily imposed. Thus, by virtue of Section 236(3) of the Act, there will be a deemed renewal in case the order is not communicated within 30 days of the receipt of the application for renewal. The only communication received by the petitioner within 30 days is Ext.P5, which merely states that his application for renewal could be considered only after receipt of the report of the sub committee. Whether this could be treated as an order as contemplated under Section 236(3) of the Act, therefore, arises for consideration.

10. Sub-section (8) of Section 236 provides that every order of the Secretary refusing, suspending, cancelling or modifying a license or permission shall be in writing and shall state the grounds on which it proceeds. Therefore, the nature of the orders which are required to be passed by the Secretary are thus specified in sub-section (8) of Section 236. In the case of a renewal application, the order that is contemplated is either the grant of renewal sought for or refusal thereof.

11. On going through Ext.P5, it can be clearly seen that there was no refusal to grant the renewal as sought for. A perusal of Ext.P5 shows that it is not the type of an order as referred to in Section 236 (8), refusing, suspending, cancelling or modifying the licence stating the grounds. But the Panchayat has only deferred consideration of the same. As such, in the absence of passing an order refusing licence the deeming provision comes

into play and the petitioner is deemed to have been granted the renewal sought for. Though during the course of the argument, the learned counsel appearing for the Panchayat has produced a copy of the communication dated 30.6.2007 addressed to the petitioner, the same has not been produced along with any affidavit. According to the learned counsel appearing for the petitioner, he is not aware as to whether his client has received any such communication. Still, since arguments were addressed on the legality of the said communication, we shall now consider whether the said communication would have any legal effect.

12. As per this communication, petitioner is informed that since there are number of complaints against his unit and in view of the pendency of enquiry thereon, it is not possible to grant licence. However, it informs that for the purpose of enquiry, they will be visiting the unit of the petitioner. Once there is a deemed license in favour of the petitioner as we have already held, thereafter it can only be revoked, suspended or cancelled, after following the procedure laid down under sub-section (9) of Section 236 of the Act. There arises no occasion for passing an order of the type referred to in the communication dated 30.6.2007 informing inability to grant license since the license is already deemed to have been granted in favour of the petitioner. In such circumstances, petitioner having possessed of a deemed license in his favour unless it is suspended, revoked or

cancelled by the Panchayat, petitioner is entitled to carry on his business without being obstructed by anybody.

13. In the circumstances, we direct the second respondent, Sub Inspector of Police, Kunnathunadu Police Station to give necessary protection to the petitioner for the running of his unit without being obstructed by respondents 5 to 8 so long as the licence is not suspended, revoked or cancelled by the Panchayat in accordance with law.

14. Learned counsel appearing for respondents 5 to 8 has submitted that as against the consent letter of the Pollution Control Board, he has preferred an appeal. Needless to say that in case the consent granted is reversed in appeal, this order will be ceased to be in force thereafter. We however, make it clear that this will not interdict the Panchayat from passing any orders either suspending or cancelling the license, if there are valid grounds thereto and after following the procedure laid down by the Act and Rules.

The writ petition is disposed of as above.

P.R. RAMAN,
(JUDGE)

K. HEMA,
(JUDGE)

knc/-